THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 17992 OF 2000

Between:

Md.Abdul Samad ….. Petitioner

And

1. South Central Railway rep.
By the General Manager, Rail Nilayam,
Secunderabad and 2 others …. Respondents

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 17992 OF 2000

ORDER:

Aggrieved by the order of the 3rd respondent dated 28.6.2000, whereby the petitioner's request for sanction of compassionate allowance was rejected, the present writ petition is filed.

The petitioner was appointed as a Rakshak in the Railway Protection Force. He joined the respondent organization in 1956 and was posted at Lalaguda, Secunderabad. The petitioner would submit that, in due recognition of his services and reckoning his seniority in the grade of Rakshak, he was promoted as a Senior Rakshak and posted at Moula Ali, that he had rendered unblemished service during his career both as a Rakshak and as a Senior Rakshak, that he gave no scope for complaints either regarding his integrity, efficiency or his devotion in the discharge of the duties that were assigned to him from time to time by his superior officers and that he was awarded a cash award, vide proceedings dated 15.7.1962, for the good work done by him in apprehending an ex-convict Mohd.Khasim while he was attempting to steal a parcel valued at Rs.500/- from the Secunderabad Station platform on 20.2.1962.

The petitioner was suspended from service on 18.6.1968 on

the allegations of pilferage of 65 kgs of dry coconut and 45 kgs of khus-khus. A charge sheet was issued on 28.2.1968, an enquiry was held and the petitioner was imposed the punishment of removal from service, vide proceedings dated 11.2.1969. The appeal and revision preferred by him were rejected. O.S.1249 of 1969 filed by the petitioner before the First Assistant Judge, City Civil Court, Secunderabad was dismissed by order dated 18.4.1972. Aggrieved thereby the petitioner filed A.S.87 of 1974 on the file of the Addl. Chief Judge-cum-Special Judge for SPE and CBI cases, Hyderabad which also came to be dismissed. Petitioner would submit that the order of removal passed by the disciplinary authority, on 11.2.1969, attained finality and as the rules did not provide for grant of pension and gratuity to an employee who was removed from service, the petitioner was not paid any such benefit.

The Railways issued Circular No.145/95 dated 1.12.1995 prescribing a detailed procedure for grant of compassionate allowance to employees who had either been removed or dismissed from service. Reference is made therein to Rule 65 of the Railway Servants (Pension) Rules, 1963 which prescribes that a Railway servant, who had been dismissed or removed from service, should forfeit his pension and gratuity. However, under the proviso thereto, the competent authority is empowered, in deserving cases, to sanction a compassionate allowance not exceeding 2/3rd of the Pension or Gratuity or both as is admissible to such employee if he had retired on compensation pension. The said circular also notes that the proviso to Rule 65 was not within the knowledge of many of its employees and that it was incumbent upon the authorities to intimate all the employees of the existence

of such a provision along with the order of dismissal/removal. Petitioner would submit that, though he was removed from service with effect from 11.2.1969, he was not aware of such a provision that would enable the authority to consider grant of compassionate allowance even in respect of an employee who had been inflicted with the capital punishment of removal or dismissal from service and that it was certain well-wishers in the department, who having noticed the deplorable financial condition of the petitioner, had informed him of the circular and had advised him to request the competent authority for grant of compassionate allowance. The petitioner submitted a representation on 22.2.1999 but it did not evoke any response necessitating his having to get a notice issued through his counsel on 17.11.1999. No orders were, however, passed on his representations except informing him that his representation was forwarded to the 3rd respondent.

The Petitioner filed W.P.No.4800/2000. This Court, in its order in W.P.4800 of 2000 dated 27.03.2000, noted that the petitioner had been dismissed from service in the year 1969 and that the order of dismissal had become final. After referring to Rule 65 of the Railway Service (Pension) Rules, 1993 and to the Circular of the Railways issued in the year 1995, whereunder the Railways, while directing its officers to consider the request for compassionate allowance, had observed that many of the employees could not avail the compassionate allowance in view of their ignorance of its existence, this Court took note of the submission made on behalf of the petitioner that this was one such case of ignorance on the part of the employee and observed thus:

"…….However, the learned counsel for the petitioner restricts his submission and says that the interest of justice would be met if the

petitioner's representations dated 24.9.1998 and 22.2.1999 addressed to the Divisional Security Commissioner (RPF) are considered and disposed of. The submission of the learned counsel for the petitioner cannot be said to be an unreasonable one, particularly, in the facts and circumstances of the case. The Circular itself issued by the Railways reveal that the Management had recognized the ignorance of the employees about the Rule 65 of the Rules, under which even a dismissed employee is entitled for compassionate allowance, if a case is made out for grant of such compassionate allowance.

In the circumstances, I consider it appropriate to direct the Divisional Security Commissioner – 3rd respondent to dispose of the application filed by the petitioner on 24..9.1998 followed by another representation dated 22.2.1999. This court would not have directed the respondents herein to cnsider such representations but for the Rule 65, and the clarification made by th e Railways vide its Circular Letter No.P®500/XVI dated nil-12-1995. The Circular read along with Rule 65 would undoubtedly confer right upon the dismissed employees also to seek compassionate allowance subject to satisfying the authorities that it is a fit case for grant of such compassionate allowance. The matter shall be examined by the respondents in accordance with law, and in the light of the Circular referred to herein above. An appropriate decision in this regard shall be taken by the respondents within three months from the date of receipt of a copy of this order.

The writ petition is accordingly disposed of. No order as to costs"

In supposed compliance of the order of this Court in W.P.4800 of 2000 dated 27.3.2000, the 3rd respondent passed the following order on 28.6.2000:

"With reference to your representation dated 24.9.1998 and 22.2.1999, requesting for grant of compassionate allowance under para 309 of manual pension rules 1950. On perusal of the entire file, it is observed that you were charge sheeted under rules 44 for pilferage of 45 kgs of khus khus seeds and 65 kgs dry coconut and for attempting to sell them to a hotel owner who is a habitual receiver of stolen property. You were removed from service w.e.f. 15.2.1969 by AS/SC and your appeal was also rejected by security officer/SC and revision petition by CSO/SC.

As per the rules, the compassionate allowance may be granted to the staff who dismissed and removed, in deserving cases and to take into account not only the actual misconduct or course of misconduct which led to removal/dismissal or the staff, but also the kind of service the employee has rendered.

However, in view of the charge against you which led to your removal from service, it is not possible to accept your request. Your representation for grant of compassionate allowance is rejected"

Sri Siva, learned counsel for the petitioner, would submit that the proviso to Rule 65 of the Railway Services (Pension) Rules, 1993 enables the competent authority, if the case deserves special consideration, to sanction compassionate allowance not exceeding 2/3 of the pension or gratuity which would have been admissible to an employee if he had retired on compensation pension. Learned counsel would submit that, since the benefit of compassionate allowance is extended even to those employees who had been dismissed or removed from service, the said power conferred under the proviso to Rule 65, has to be exercised by the competent authority not merely on the basis of the order of punishment but on consideration of the entire service rendered by the employee concerned and other extenuating circumstances such as the financial hardship which an employee is facing etc to decide as to whether an employee's case deserved special consideration for being sanctioned such compassionate allowance. Learned counsel would submit that, since the maximum penalty which can be imposed under the Service Rules is "Removal and Dismissal from Service", in every case where such punishment is imposed, the charges held established against the delinquent employee are bound to be grave and serious in nature. According to the learned counsel, since the proviso extends the benefit of compassionate allowance even to such employees, the mere fact that they have been imposed such a punishment or the grave and serious misconduct which has led to imposition of such a punishment, cannot from the sole basis for denying the employee the benefit of compassionate allowance. Learned counsel would point out that, while the 3rd respondent had

himself noted that in addition to the actual misconduct or the course of misconduct which has led to the removal/dismissal of the employee the kind of service which the employee has rendered is also required to be taken into consideration, he had, however, denied the said benefit relying solely on the charges held established against the petitioner which had led to his removal from service and had not taken into consideration the kind of service which the petitioner had rendered prior thereto. Learned counsel would submit that, since the competent authority has not taken into account relevant factors and was swayed away by irrelevant considerations, the impugned order dated 28.6.2000 was liable to be quashed.

Learned counsel would fairly submit that Rule 65 fell for consideration before the Division Bench of this Court in **Y. Venkataramana Reddy Vs. Union of India**[1] wherein this Court held that the said provision did not have retrospective application and had denied the benefit to the petitioner therein who was removed from service in 1974, prior to such rule having come into force in 1993. Learned counsel would, however, submit that an identical provision existed even in paragraphs 309 and 310 of the previous rules i.e., Manual of Railway Pension Rules, 1950 which rules were in force when the petitioner was removed from service in 1969. Learned counsel would submit that, while normally this Court on quashing the impugned order would remand the matter for reconsideration of the competent authority, no useful purpose would be served in doing so in the present case as despite specific directions from this Court, in W.P. No. 4800 of 2000 dated 27.03.2000, to consider the case of the petitioner, the 3rd

respondent had mechanically passed an order rejecting the petitioner's request without application of mind to the scope and ambit of the provision nor the facts and circumstances of the case on hand. Learned counsel would submit that a mandamus should issue to the 3rd respondent to extend the benefit of grant of compassionate allowance to the petitioner. Learned counsel would further submit that the respondents, in their counter affidavit in the present writ petition, had for the first time taken the plea of latches and that the 3rd respondent, even in the impugned order dated 28.6.2000, had not rejected the petitioner's request on the ground of latches. According to the learned counsel, since the impugned order dated 28.06.2000 was passed in exercise of the powers conferred by the rules which have the force of law, the order must either stand or fail on its own legs and cannot be supplemented by way of a counter affidavit. Learned counsel would rely on **Commissioner of Police, Bombay v. Gordhan Das**[2] and **Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi**[3].

Sri Gouri Shankar Sanghi, learned Senior Standing Counsel for the Railways, on the other hand, would submit that the petitioner was removed from service for proved misconduct of pilferage of 45 kgs of khus khus and 65 kgs of dry coconut and that his case did not merit grant of compassionate allowance. Learned Senior Standing Counsel would submit that, though the petitioner had been removed from service in the year 1969, he had kept silent for three decades thereafter and had submitted his representation for the first time only in the year 1999. He would submit that no legal right has been conferred on the petitioner for

grant of compassionate allowance and as such his case, particularly in the light of the fact that he was removed from service for proved misconduct of pilferage of railway property and attempting to sell them to a habitual receiver of stolen property, did not necessitate interference in proceedings under Article 226 of the Constitution of India and that he was not entitled for grant of relief on sympathetic considerations. Learned counsel would place reliance on **State of Bihar v. Amrendra Kumar Mishra**[4] and **R.K.Agrawal v. State of Rajasthan**[5]. Learned Counsel would submit that, as a result of the inordinate delay of more than three decades, it was not possible to trace the earlier service records of the petitioner. He would refer to the counter affidavit filed by the respondents wherein, while acknowledging receipt of the petitioner's application for grant of compassionate allowance vide representation dated 22.2.1999, it is stated that as the case was 30 years old, and for want of records, the case could not be disposed of and that in the meanwhile the petitioner had filed W.P.4800 of 2000.

Before examining the rival contentions, it is necessary to note Rule 65 of the Railway Services (Pension) Rules 1993, and paragraphs 309 and 310 of the Manual of Railway Pension Rules, 1950, which read thus:-

Railway Service (Pension) Rules, 1993:-

"65.Compassionate allowance:-(1) A railway servant who is dismissed or removed from service shall forfeit his pension and gratuity :

Provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension.

(2) A compassionate allowance sanctioned under the proviso to sub-rule (1)

shall not be less than three hundred seventy five rupees per mensem”

Manual of Railway Pension Rules, 1950:-

309. Removal or dismissal from service: No pensionary benefit may be granted to a Railway servant on whom the penalty of removal or dismissal from service is imposed; but to a Railway servant so removed or dismissed, the authority who removed or dismissed him from service may award compassionate grant(s) – corresponding to ordinary gratuity and/or death-cum-retirement gratuity and/or allowances-corresponding to ordinary pension, when he is deserving of special consideration; provided that the compassionate grant(s) and /or allowance awarded to such a Railway servant shall not exceed two-thirds of the pensionary benefits which would have been admissible to him if he had retired on medical certificate.

310: Para 309 vests the officer removing or dismissing the Railway servant from service with an absolute discretion to grant or not to award any compassionate grant(s) and/or allowances, the only restriction being that, if awarded, it shallnot exceed the maxisum of two-thirds of pensionary benefits that would be admissible to the Railway servant concerned on retirement on invalid gratuity/pension. Each case has to be considered on its merits and a conclusion has to be reached on the question whether there were any such extenuating features in the case as would make the punishment imposed, though it may have been necessary in the interests of Government, unduly hard on the individual. In considering this question it has been the practice of take into account not only the grounds on which the Railway servant was removed or dismissed, but also the kind of service he has rendered. Where it can be legitimately inferred that the Railway servant’s service has been dishonest there can seldom be any good case for award of compassionate grant(s) and /or allowances. Poverty is not an essential condition precedent to the award of compassionate grant(s) and /or allowances, but special regard is also occasionally paid to the fact that the Railway servant has a wife and children dependent upon hi, though this factor by itself is not, except, perhaps, in the most exceptional circumstances, sufficient for the grant of compassionate grant(s) and/or allowance. “

While it is true that this Court would be slow to come to the aid of a litigant who is indolent or lethargic and has not chosen to invoke the jurisdiction of this Court at the earliest, in the facts and circumstances of the present case, I see no reason to non-suit the petitioner merely on the ground of laches. It is necessary to note that W.P.4800 of 2000 dated 27.3.2000 was passed after hearing both the counsel for the petitioner and the learned Standing Counsel for the Railways and it was at their request, that the

matter was taken up for final disposal at the stage of admission. While noting that the petitioner had been dismissed from service in the year 1969, and the order of dismissal had become final, this Court also noted that the railways had themselves issued a circular in 1995 observing that many of its employees could not avail the benefit of compassionate allowance in view of their ignorance and had directed its officers to bring the contents of the circular to the notice of the employees concerned. This Court considered it appropriate to direct the 3rd respondent to dispose of the applications filed by the petitioner on 24.9.1998 and 22.2.1999. This Court also observed that no such direction would have been passed but for the Rule 65 and the clarification made by the Railways in its Circular of December, 2005. This Court held that the Circular read with Rule 65 undoubtedly conferred a right upon the dismissed employee also to seek compassionate allowance subject to satisfying the authorities that it was a fit case for grant of such compassionate allowance. This Court directed the 3rd respondent to examine the representations of the petitioner in accordance with law and in the light of the Circular of December, 2005. The order of this Court, in W.P. No. 4800 of 2000 dated 27.3.2000, a judgment inter parties has attained finality. It is also necessary to note that, in the impugned order dated 28.6.2000, the 3rd respondent did not reject the petitioner's request for grant of compassionate allowance on the ground of laches. Not having taken the plea of laches in the earlier writ petition and having acted in accordance with the said order, in considering the representation of the petitioner on merits, it is not open for the respondents to now take the plea of laches for the first time in the

present writ petition. It is also necessary to note that the in the circular issued in December, 1995 the Railways have taken note of the fact that its employees by and large were ignorant of the existence of such a provision.

The justification, in support of this plea of latches, is that the old service records of the petitioner would not be available. The averments in the counter affidavit would, however, not support such a contention. All that is stated therein is that the petitioner had applied for grant of compassionate allowance, vide representations dated 24.9.1998 and 22.2.1999, and since the case was about 30 years old, for want of old records, the case could not be disposed of. Failure to consider the representation submitted by the petitioner earlier was for want of old records. In the impugned order dated 28.6.2000 the 3rd respondent, while rejecting the petitioner's request for grant of compassionate allowances, has specifically noted that he had perused the entire file. The only inference which can be drawn from a conjoint reading of the counter affidavit and the impugned order dated 28.6.2000 is that, while the representations dated 24.9.1998 and 22.2.1999 could not be disposed of for want of records, when the petitioner's case was subsequently considered, in accordance with the directions of this Court in W.P.4800 of 2000 dated 27.3.2000, the records were available and they were perused by the 3rd respondent. The plea of laches must, therefore, fail.

In **R.K. Agrawal**[5], the Supreme Court observed:-

"…… In the civil appeal the State of Rajastan has also raised several other legal issues in support of their appeal. According to the learned counsel for the State of Rajastan, the service of a Government servant shall not qualify unless he is appointed and his duties and pay are regulated by the government, or under conditions determined by the government. He has

further argued that for the purpose of sub-rule (1) of Rule 13, the expression 'service' means service under the government and paid by the government from the consolidated fund, but does not include service in a non-pensionable establishment, work charged establishment and service in a post paid from the contingencies, unless such service is treated as qualifying service by that government. Though this argument was raised before the High Court, no specific finding has been rendered by the High Court on this occasion also.

We are of the opinion that since several important issues have not been dicided by the High Court, we have no other option except to set aside the judgment of the High Court, impugned in these two appeal, and remit the mater to the High Court for disposal f the same afresh. **As rightly pointed out by the appellant in Civil Appeal No.8128 of 2004, the High Court has not considered the delay of 20 years in giving the pension and pro-rata benefits. If the delay is attributable to the Government, the appellant is always entitled for the interest. We request the High Court to consider this point also with reference to the pleadings raised by the parties to this action.** Since the matter is pending before one forum or the other for more than two decades, we request the High Court to dispose of the writ petition by a Division bench within three months from today. Both parties at liberty to file additional documents before the High Court……"

In **R.K. Agrawal**[5], the High Court had not considered the aspect of delay and laches and it was in such circumstances that the Supreme Court had requested the High Court to consider this point also with reference to the pleadings raised by the parties. The said judgment would have had relevance if this Court had failed to consider the specific plea urged by Sri Gouri Shanka Sanghi, learned Senior Standing Counsel, with regards laches on the part of the petitioner in invoking its jurisdiction. Since this contention of the learned Standing counsel has been elaborately dealt with, the judgment in **R.K. Agrawal**[5] has no application.

While there can be no dispute that the charges held established against the petitioner, of pilferage of railway property and attempt to sell it to a habitual receiver of stolen property, are grave and serious and would deserve no sympathy from this Court in exercise of its jurisdiction under Article 226 of the Constitution

of India, it cannot be lost sight of that the applicable rules extend the benefit of compassionate allowance even to those who have been dismissed/removed from service, however, subject to the conditions stipulated therein. Under the Disciplinary and Appeal Rules, removal and dismissal from service are the harshest of the penalties prescribed and it is only when the charge held established against an employee are grave and serious would such a punishment be imposed. While the submission of Sri Gouri Shankar Sanghi, learned Senior Standing Counsel, that no indulgence should shown by this Court to such an employee, cannot be said to be without merit, since the railway authorities, in their wisdom, have made rules extending the benefit of grant of compassionate allowance even to those employees, who have been removed/dismissed from service, it is not for this Court to delve further on this aspect. Under the Rules, while an employee is entitled for compensation pension on his retirement, the maximum limit, upto which compassionate allowance can be granted to an employee who is dismissed or removed from service is restricted to 2/3rd thereof. The rule making authority has considered it appropriate to make an ameliorative provision even in favour of employees who have been dismissed/removed from service. Since this benefit is extended even to those who have been removed from service, as has been rightly observed by the 3rd respondent himself, in the impugned order dated 28.6.2000, the actual misconduct or the course of misconduct which led to the removal or dismissal from service cannot by itself be a ground for denying the benefit of grant of compassionate allowance to such an employee. Lest it be construed otherwise it is made clear that

this would also be one of the factors which may be required to be taken into consideration by the competent authority while arriving at his decision in granting/refusing to grant compassionate allowance but this cannot be the only factor. As has been noted by the 3rd respondent himself, the kind of service which the employee has rendered would also be a relevant factor. In addition, the fact that the applicant has a wife and children dependent upon him is a factor which para 310 of the Manual of Pension Rules, 1950 requires the competent authority to take into consideration while exercising his discretion as to whether or not the benefit of compassionate allowance is required to be extended to such an employee.

While the submission of the Learned Senior Standing Counsel, that where it can be legitimately inferred that the railway servant's service has been dishonest there can seldom be any good case for award of compassionate allowance as is referred to in para 310, cannot be said to be without merit, these are all matters for the competent authority, in his discretion, to decide. Whether the service rendered by a railway servant to be categorized as dishonest, is his entire service or is even one such dishonest act sufficient to disentitle an employee for grant of compassionate allowance is a question which may require further examination. It is, however, unnecessary for this Court to examine this question in the present writ petition. Suffice it to note that, while para 310 provides that such dishonest service would seldom be a good case for award of compensation, it does not preclude the competent authority, in exceptional circumstances, to grant compassionate allowance even in such cases. In any event these are all matters for the competent authority to consider in

accordance with the applicable rules.

While it is true that the Division Bench of this Court, in **Y. Venkataramana Reddy[1],** has held that the Railway Service (Pension) Rules, 1993 does not have retrospective effect and has no application to persons who have been removed or dismissed from service prior to the coming into force of the rules, the fact remains that paragraphs 309 and 310 of the Manual of Railway Pension Rules, 1950 confer a similar benefit on employee who have been dismissed/removed from service. Sri Gauri Shankar Sanghi, learned Standing Counsel, would fairly submit that the Manual of Railway Pension Rules, 1950 was in force when the petitioner was removed from service in the year 1969. Since the impugned order, of the third respondent dated 28.06.2000, has not been passed in accordance with the either Rule 65 of the Railway Services (Pension) Rules, 1993 or paragraphs 309 and 310 of the Manual of Railway Pension Rules, 1950, the impugned order is liable to be quashed and the matter remanded to the 3rd respondent-competent authority to consider the matter afresh in accordance with Paragraphs 309 and 310 of the Manual of Railway Pension Rules, 1950.

The submission of Sri Gauri Shankar Sanghi, learned Standing Counsel for the Railways, that this Court should not pass orders on sympathetic grounds is required to be dealt with. In **Amarendra Kumar[4]**, the Supreme Court observed:-

"…….It is now well settled that in absence of any legal right, the Court should not issue a writ of or in the nature of mandamus on the basis of sympathy….."

This Court would not exercise its jurisdiction under Article 226 of the Constitution of India merely on sympathetic grounds. It

is only when there exists a legal right conferred on him under a provision having the force of law, and a corresponding legal duty is cast on the authorities concerned, would this Court be justified in issuing a mandamus. In this case the legal right, which the petitioner has, is referable to Rule 65 of the Railway Services (Pension) Rules, 1993 and paragraph 309 and 310 of the Manual of Railway Pension Rules, 1950. In W.P.No.4800 of 2000 dated 20.7.2003 this Court has specifically held that the circular of the Railways issued in December, 1995 read with Rule 65 would undoubtedly confer the right on dismissed employees also to seek compassionate allowance subject to their satisfying the competent authority that it is a fit case for grant of compassionate allowance. The relief now granted in this writ petition is not on sympathetic grounds, but as the petitioner has a legal right to have his case considered in accordance with paragraphs 309 and 310 of the Manual of Railway Pension Rules, 1950.

In cases where its directions are repeatedly ignored, this Court would be justified in issuing a mandamus directing the authorities concerned to grant the relief sought for. The present case does not necessitate issuing of any such directions. The power, conferred under paragraph 309 and 310 of the Manual of Railway Pension Rules, 1950, is to be exercised by the competent authority in its discretion. Grant of compassionate allowance is more an exception than the norm. Several factors have to be taken into consideration by the competent authority in deciding as to whether the benefit of compassionate allowance should or should not be extended to an employee who is removed from service, more so, on the grounds of pilferage and attempt to sell railway property to a habitual receiver of stolen property. I see no

reason to issue a mandamus to the respondents to grant compassionate allowance to the petitioner herein.

It would meet the ends of justice if the writ petition is disposed of with a direction to the 3rd respondent to reconsider the matter afresh, in the light of the provisions of para 309 and 310 of the Manual of Railway Pension Rules, 1950, for grant of compassionate allowance to the petitioner herein, within a period of four months from the date of receipt of a copy of this order. The writ petition is disposed of accordingly. However, in the circumstances, without costs.

_____

15-12-2006

asp

---

[1] (2003(2) ALD 471)

[2] AIR 1952 SC 16

[3] AIR 1978 SC 851

[4] 2006(7) Supreme 374

[5] 2006(8) Supreme 826